
(1993) 05 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 299 of 1991

Banwari Lal and ors.

APPELLANT

Vs

Kanwar Lal and anr.

RESPONDENT

Date of Decision : 17-05-1993

Acts Referred:

Citation : (1993) 3 AICLR 75 : (1993) 3 RCR(Criminal) 106

Hon'ble Judges : A.S.Nehra, J

Advocate : S. S. Narula, B. S. Randhawa, Advocates for appearing Parties

Judgement

A. S. Nehra, J

1. This petition for revision of the order dated 31101990 of Shri N. L. Bhawaria, SubDivisional Magistrate, Rewari has arisen in the following circumstances :

2. Respondents filed an application under Section 133 Criminal Procedure Code, stating that the petitioners have encroached upon a thorough fare which was being used by the respondents as a path to their houses. The learned Magistrate issued notice to the petitioners who appeared before him but later on absented from the proceedings. Exparte proceedings were taken on 1241990 against the petitioners. Shiv Lal son of Kanhya Lal and Durga Prashad son of Samma Singh, ExSarpanch appeared as witnesses of the respondents and stated that they knew the parties and they had also seen the old house of the respondents. They further stated that Banwari Lal and Guggan sons of Dilsukh have constructed chappars without lawful authority two years ago and by raising chappars they have obstructed the path and on account of this the respondents have no access to their old house as the path has been blocked.

3. Petitioners filed an application on 2551990 for setting aside Exparte order dated 1241990. The exparte proceedings were set aside by the learned Magistrate. Counsel for the petitioner crossexamined Shiv Lal son of Kanhya Lal but did not crossexamine Durga Prashad ExSarpanch. Sub Divisional Magistrate ordered that the path in question is declared as thoroughfare and it was ordered

that the petitioners should clear the obstruction immediately in the path in question.

4. The only point raised by Mr. B. S. Randhawa, Advocate, learned counsel for the petitioner before me was that the encroachment was an old one, having existed at least two years before filing the application under Section 133, Criminal Procedure Code, and the provisions Section 133, Criminal Procedure Code, could not be pressed into service for vacating it, their operation being limited to cases emergency or, in any case, urgency. After going through the material on record, I am of the opinion that the point is well taken. Both the PWs. have started on oath that Banwari Lal and Guggan sons of Dilsukh have constructed chappars without lawful authority since two years ago, and by raising chappars they have obstructed the path. It is thus clear that the encroachment complained of was of more than two years ago by the time of proceedings before the learned Magistrate were initiated.

5. It appears to be well settled that Section 133 is not intended for long standing constructions but is meant to remove only such unlawful constructions which had been lately built in a public place. Authorities for this proposition are Baisakhi Ram v. Emperor, AIR 1930 Lahore 361; Khan Din v. Wasan Singh, AIR 1935 Lahore 28; Emperor v. Tolsi Ram, AIR 1938 Lahore 523 and Nanumal and another v. Emperor, AIR 1939 Lahore 452 and I may quote the following observations with advantage from Emperor v. Tolsi Ram (supra) :

"It has been frequently pointed out that is only on proof of urgency or imminent danger to the public interest that action under Section 133 et seq can be taken and that these provisions should not be allowed to be used as a substitute for litigation in Civil Court:

x x x

Ch. 10 of the Code deals with public nuisances, and as has been stated above provides a speedy and summary method for dealing with them, in cases of great emergency and where there is imminent danger to the public interest. The fact that an obstruction has been allowed to stand, without objection, in a public place for many years itself indicates that there is no such emergency or imminent danger to the public interest. The existence of a long standing obstruction cannot, therefore, without proof of something having recently happened, be considered to be a "public nuisance."

6. These observations are fully applicable to the facts of the present case wherein, as pointed out earlier, the encroachment made was two years old when the proceedings before the learned Magistrate originated. Section 133 of the Code of Criminal Procedure not being meant for proceedings of this kind, I accept this petition and set aside the orders passed by the SubDivisional Magistrate, Rewari on 31101990. Respondents may, if so advised, pursue their remedy in a civil Court.